

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CONNIE LOUGHRAN,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

CASE NO. C06-5607FDB

REPORT AND  
RECOMMENDATION

Noted for May 18, 2007

This matter has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4) and as authorized by Mathews, secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This matter has been fully briefed. In response to Plaintiff's Opening Brief, Defendant concedes that the ALJ erred in his decision, necessitating remand for further administrative review. Plaintiff argues the errors made should persuade the court to remand the matter, not for further review, but for an award of appropriate benefits, or alternatively, to remand for consideration by a different ALJ. Accordingly, the only issue before the court is the appropriate remedy. After reviewing the record, the undersigned recommends that the Court remand the matter for further proceedings with another ALJ assigned to the matter.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff, Connie Loughran ("Ms. Loughran"), has alleged disability since October 2001 due to Borderline Intellectual Functioning, Panic Disorder with Agoraphobia, Scoliosis and back pain radiating down her right leg. (Tr. 17, 62, 72). Ms. Loughran filed an application for SSI benefits on March 12, 2003 (Tr. 62-65), which was denied at the Initial and Reconsideration levels of review. On October 15, 2003 she requested a hearing. (Tr. 34). It was held on August 12, 2005. (Tr. 347-387). On February 24,

1 2006, Administrative Law Judge Joyner (ALJ) issued an unfavorable decision. (Tr. 14-24). The ALJ  
2 determined that Ms. Loughran's impairments limit her, but that she could work as an assembler and  
3 solderer and therefore is not disabled. (Tr. 23-24).

4 The Appeals Council denied Ms. Loughran's request for review on September 21, 2006, leaving  
5 the ALJ's decision as the final decision of the Commissioner. (Tr. 6-8). The instant action was initiated by  
6 Ms. Loughran on October 23, 2006. In her Opening Brief Ms. Loughran argued ALJ Joyner failed to  
7 appropriately consider the matter. Plaintiff specifically contends the ALJ made the following errors:

8 (i) whether the jobs identified by the VE in response to the ALJ's hypothetical question for  
9 "sedentary" jobs requiring only "simple" tasks were consistent with the description in the Dictionary of  
10 Occupational Titles;

11 (ii) whether Ms. Loughran's Panic Disorder is a severe impairment at Step 2 of the  
12 sequential evaluation;

13 (iii) whether the ALJ should have conferred with a medical expert about whether Ms. Loughran  
14 medically equals the severity criteria of Listing 12.05(C);

15 (iv) whether the ALJ properly excluded the opinion of Dr. Wingate, an examining specialist,  
16 regarding the specific limitations caused by Ms. Loughran's mental impairments;

17 (v) whether the ALJ properly excluded Dr. Quint's opinion of limitations in reaching  
18 and handling;

19 (vi) whether the ALJ properly found Ms. Loughran's not credible;

20 (vii) whether the ALJ properly dismissed lay evidence from Ms. Hardesty; and

21 (viii) whether the record is complete or further development is needed.

22 In response Defendant concedes (A) the ALJ failed to properly consider the opinions of Dr. Wingate and  
23 Dr. Mayers; (B) the ALJ must make a new Step-two determination regarding Ms. Loughran's panic  
24 disorder; (C) the ALJ must make a new residual functional capacity assessment; and (D) the ALJ must  
25 further resolve any inconsistencies between the light level, detailed jobs identified by the VE and the  
26 residual functional capacity for sedentary, simple repetitive work.

#### 27 DISCUSSION

28 The decision whether to remand a case for further proceedings or simply to award benefits is within

1 the discretion of the court. Harman v. Apfel, 211 F.3d 1172, 1176-1178 (9th Cir. 2000). An award of  
 2 benefits is appropriate when no useful purpose would be served by further administrative proceedings, or  
 3 when the record has been fully developed and there is not sufficient evidence to support the ALJ's  
 4 conclusion. Rodriguez v. Bowen, 876 F.2d 759, 763 (9th Cir. 1989). Remand is appropriate where  
 5 additional administrative proceedings could remedy defects. Id.; Bilby v. Schweiker, 762 F.2d 716, 719  
 6 (9th Cir. 1985) (*citing* Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984)). Where remand would only  
 7 delay the receipt of benefits, judgment for the claimant is appropriate. Rodriguez, 876 F.2d at 763.

8 After reviewing the arguments presented, the court finds the matter should be remanded for further  
 9 proceedings. There are several unresolved issues for the administration to consider as noted by  
 10 Defendant's concession of errors, and the need to provide the administration the opportunity to cure those  
 11 defects. However, on remand, a newly assigned ALJ should not limit his or her review of the issues  
 12 conceded. A new ALJ should review the matter in its entirety, including, but not limited to, the following:

- 13 • whether Ms. Loughran's mental retardation equals the severity criteria of Listing 12.05(c)2;
- 14 • the ALJ's credibility analysis;
- 15 • the ALJ's failure to consider the lay observations of Ms. Hardesty; and
- 16 • the ALJ's failure to include handling limitations in his RFC.

#### 17 CONCLUSION

18 Based on the foregoing, the undersigned recommends that the Court REMAND the matter to the  
 19 administration with the direction that the Commissioner assign a new ALJ. On remand the new ALJ shall  
 20 review the record as described in this report.

21 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the  
 22 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.R.Civ.P.  
 23 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.  
 24 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to  
 25 set the matter for consideration on **May 18, 2007**, as noted in the caption.

26 DATED this 27<sup>th</sup> day of April, 2007.

27 /s/ J. Kelley Arnold  
 28 J. Kelley Arnold  
 U.S. Magistrate Judge